EXHIBIT 1

VERIZON VIRGINIA INC.

Responses To

Interrogatories and Requests for Production Of Documents by the Staff of the State Corporation Commission (First Set) PUC Case Nos. PUC010166, PUC010176

ATTACHMENT ONE

	Description	January	February	March	April	May	June	July	August	September	October	Total
A	UNE DS1 Service Orders Completed	19	30	51	31	77	75	52	42	54	100	531
B	UNE DS1 Loops Completed	19	30	51	31	77	75	52	42	54	100	531
C	UNE DS1 Service Requests Rejected for Facilities	0	0	0	0	8	34	47	63	21	14	187
D	UNE DS1 Loops Rejected for Facilities	0	0	0	0	8	34	47	63	21	14	187
E	UNE DS3 Orders Completed	0	0	0	0	0	0	0	0	0	0	0
F	UNE DS3 Loops Completed	0	0	0	0	0	0	0	0	0	0	0
G	UNE DS3 Requests Rejected for Facilities	0	0	0	0	0	0	0	0	0	0	0
H	UNE DS3 Loops Rejected for Facilities	0	0	0	0	0	0	0	0	0	0	0

EXHIBIT 2

Outside Plant Engineering & Planning	verizon	Type: InfoFlash Number: 2001-00256-OSP Original Release Date: 05/10/2001 Revised Date: 08/24/2001 Release Number: 5

OSP HICAP FLASH

DOCUMENT # 2001-00256-OSP EFFECTIVE DATE: 05/10/01

OSP ENGINEERING STANDARDS

PURPOSE: To communicate Verizon East Outside Plant Engineering new and revised Process Standards.

CONTACT: Sharon Rose 607-754-3942

APPLICABLE TURFS: Entire Verizon East

SUBJECT: Unbundled Orders where NO facilities exist

This FLASH is being issued to help answer some of the questions we have had on the Unbundled orders (DS1 & DS3)

REVISED FLASH: PLEASE DO NOT CONFUSE UNBUNDLED DS1 & DS3 ORDERS WITH REGULAR WHOLESALE DS1 & DS3 ORDERS. THE UNBUNDLED DS1 & DS3 ORDERS HAVE A SERVICE MODIFIER OF HCFU, HFFU & LXFU (the last letter is a U). THESE ARE THE ONLY ORDERS THAT YOU CAN ANSWER BACK WITH NO FACILITIES. ALL OTHER ORDERS YOU DO HAVE TO PLACE FACILITIES.

Revised 7/24/01 to add a Power Point Presentation, and the Letter that will be sent to all CLEC in Verizon footprint. The PPT gives you detailed pictures to help you answer when VZ would answer Facilities Yes or NO. See red highlighted area below for more information required when answering the order as Facilities NO.

Work that can be performed for these services:

- Test and Tag of copper facilities (this is done to purify VZ records)
- Unload improper loading (this is done to correct VZ plant, and not done just for the unbundled service)
- North: Cut bridge tap off if less that 18,000 from the CO
- South: Cut bridge tap off if less than 12,000 from the CO
- Do a LST (up to 2 copper paris) but the repeater shelf has to be in the CO and at the Customers Location (No Repeater Shelf is to be placed)
- Flowthrough orders (HDSL cards and Low speed mux cards ordered through TPI) we will install and turn up the facility.
- If there are more than 4 of these types of requests at one location it does not follow the OSP Plan that it must be fiber - that rule does not apply to UNE requests whatsoever. If there are copper facilities it must be completed.


UNE.ppt

Power Point presentation.
Letter to all CLEC in Verizon Footprint as of 7/24/01


unebld~4 final.do

If you have questions about the other Unbundled service offerings (example TXNU,TXSU, DYVU, DCDU, ARDU, AQDU, HMXU, or DWHU DS0's) See Flash 1999-00133-OSP

[REDACTED]

If there are no facilities available for the unbundled order, and none currently under construction, you will answer the SR in RequestNet with the following information:

- Do not put any information in the Facility Management Center (FMC) Response section because once you answer NO, you will be required to put in all the required fields. This can cause the order to go through RequestNet and the customer receiving a FOC that we will be giving them service.
- Go to the remarks screen, add a new remark with a statement similar to "No facilities available and none under way at this time" STATE WHAT equipment would

need to be placed for the service (i.e. new apparatus/doubler case, new mux, turn up shelf on mux etc). [REDACTED]

- Problem Code the remark using F21 (Unbld Loop - No Facilities)
- Apply the alert to the CATC.

Once the CATC receives the alert, they will then send a query back to the customer to ask for a sup to cancel the order.

If you have any questions please call me on 607-754-3942

The other issue is when we do answer YES to the SR and we find that the facility is defective, and there are no other facilities, we will need to go back to the CATC to tell them that the facility is defective, and they will need to go back to the customer to have the order canceled.

This process will be under review by a committee with Regulatory, Legal, Sales, and OSP staff. As soon as an answer is received this document will be updated to reflect the outcome.

ATTACHED IS THE NMC (National Market Center) FLASH

No Facilitys F21.d

ATTACHED IS THE OSP document for DS0 UNE services.

2001-00069-OSP UDLC at ID

EDIT SAVE Next Previous PRINT

Outside Plant Engineering & Planning	verizon	Type: Directive Number: 2001-00702-OSP Original Release Date: 11/13/2001 Revised Date: 11/28/2001 Release Number: 2

Subject: Unbundled Orders where no facilities exist (F21) explanation for CLEC's

Purpose This FLASH is for clarification on the standard (canned) comment that is to be used when answering a UNE order with the F21.

PERSONNEL AFFECTED: All OSP Engineering/ Provisions East & West

Contact: Refer questions regarding this FLASH to:

Sharon Rose Specialist OSP Engineering FEPS/TIRKS
607-754-3942 or

Mike Fletcher Specialist OSP Engineering FEPS/TIRKS
301-386-5842

OVERVIEW

Verizon will now provide the CLECs with the reason(s) why we cannot fulfill their ASR due to a 'no facilities'. As outlined in the CLEC letter dated July 24, 2001, VZ is NOT required to build facilities for UNE products.

General Information

The CLECs have been requesting the reason why facilities are not available. Therefore, Verizon has come up with six different scenarios why. These scenarios or reasons will be provided to the CLEC during the query process to further explain why facilities are not available.

PRODUCT INFORMATION

The following products are impacted by the 'no facilities' scenarios.

- **UNE IOF - DS1, DS3 & OCn**
- **EEL - DS1 & DS3**
- **UNE Loops - DS1 & DS3**
- **Dark Fiber - IOF or Loop**

RequestNet

The OSP and IOF are responsible for reviewing the SR and determining if facilities are available. If facilities are not available the engineer will inform the negotiator as to why.

Problem Codes

The F21 'Problem Code' will continue to be used in RequestNet to identify a no facility situation in the East where RequestNet is utilized.

You will also be required to show the following canned remarks section of the SR see below:

No Facility Reasons

The following 'no facility reasons' will be documented as an Alert in the Remarks section of your SR. The reasons are as follows:

1. No Repeater Shelf in the CO/Customer Location/RT.
2. No Apparatus/Doubler Case
3. Need to place Fiber and or Multiplexer
4. Need to turn up shelf on Multiplexer
5. No Riser Cable or buried drop wire (if trench or conduit not provided for the drop).
6. Copper cable defective no spares available-would need to place new cable (fiber/cooper)

fBA: RequestNet will be updated the 1st quarter of 2002 to incorporate these remarks in the Problem code. The Problem codes will be F21A-F. I will issue a flash when the RequestNet release is to occur.

WEST: Please just give the negotiator one of the 6 remarks. We are working to get Jep Codes to Identify the no facility reason. The JEP code now used for OSP is ZC88/ZC37, and IOF Jep code is ZC87/ZC37

ZC87=Completitive Local Exchange Carrier (CLEC) Bonafied Facility Request (BFR) Required- IOF equipment unavailable for service request.

ZC88=Competitive Local Exchange Carrier (CLEC) Bonafied Facility Request (BFR) Required – Local Loop facilities unavailable for service request.

This FLASH does not change the no build policy from the original FLASH 2001-00256-OSP, but rather clarifies the canned remarks that will be used.

Listed below is a complete clarification for each of the 6 scenarios:

1. No Repeater Shelf in CO/Customer Location/RT.
   - (the repeater shelf would be needed in a large building to extend beyond the 450' If you do not have a repeater shelf at an RT or in a large building/strip mall, and you customer is further that 450' use this remark)
2. No Apparatus/Doubler Case
   - (In some locations the Apparatus/Doubler Case is considered a repeater/regenerator case. (not the actual card) If you area uses this expression use this remark)
   - This would also be used if the Apparatus/Doubler case does not have all the pairs spiced through, and a job would need to be done to spice in the pairs.

3. Need to place Fiber and or Mux.
   - This is self explanatory that no cable exists and we would need to place it, or fiber exists and no multiplexer with spare capacity.
4. Need to turn up shelf on Mux
   - This is for any type of MUX that the shelf has not been wired, and the mid speed cards need to be installed, wired and tested before the first plug card can be installed.
5. No Riser Cable or buried drop wire (if trench or conduit not provided for the drop).
   - In some locations VZ does not have access to the riser, and the building owner or real estate company places their own cable, or where the cable in the riser is defective or exhausted. Please refer to the RDP for your area for DEMARK locations for different types of situations.
   - Buried drop wire will not be placed by VZ, but if the customer supplies us a trench or conduit, we will drop the buried wire off to the customer. **(Contractual or Tariff issues may require that the buried wire is not dropped off and that it is pulled by the installation tech through the customer provided conduit.) VZ will not dig the trench or place any coduit for the buried wire. Attached is the Dropwire Policy.** Dropwire policy.do
   - (Aerial drop will continue to be placed, unless there are circumstances beyond our control (i.e. ROW, no poles, customer will not give us access (back yard feeds etc.)
6. Copper cable defective no spares available-would need to place new cable (fiber/cooper)

EXHIBIT 3

EX PARTE OR LATE FILED

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647
www.swidlaw.com

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
TEL.(212) 973-0111
FAX (212) 891-9598

September 28, 2001

VIA COURIER

Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *Ex Parte*
Verizon "No Facilities" Policy
CC Docket Nos. 96-98 and 01-138
CCB/CPD No. 01-06.

Dear Ms. Attwood:

In this letter, the undersigned competitive local exchange carriers ("CLECs")[1] urgently request that the Commission take steps to require changes in Verizon's practice of declining to provide DS1 UNEs based on "no facilities" available. Verizon's "no facilities" policy appears to reflect a growing trend among ILECs to escape or unreasonably limit their obligation to modify existing loops as part of their provision of unbundled access to loops even when they perform the same modifications for their own retail customers.[2] The undersigned CLECs are very concerned that ILECs will attempt to use "no facilities" as a wide-ranging new tool to limit their obligations to provide unbundled network elements ("UNEs") under Section 251(c)(3). ILECs increasingly appear to view the "no facilities" theory as an opportunity to thwart CLECs' ability to provide a range of very competitive voice and data services using DS1 loops made possible by next generation technologies. In addition, Verizon's policy of refusing to provide UNEs and requiring CLECs to purchase special access service appears to be a manifestation of a larger policy to shift facilities and services provided to CLECs to separate and inferior networks. The undersigned CLECs urge the Commission to promptly stop ILECs from unreasonably limiting their obligations to provide UNEs and assure that they offer UNEs on reasonable and nondiscriminatory terms and conditions as required by Section 251(c)(3) of the Act.

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[1] Adelphia Business Solutions, Inc., ("Adelphia"), Broadslate Networks, Inc. ("Broadslate"), Focal Communications Corporation, Madison River Communications, LLC ("Madison River"), Mpower Communications, Corp. ("Mpower"), and Network Plus, Inc. ("Network Plus").

[2] A number of ILECs apparently have comparable or worse "no facilities" policies. See Letter from XO Communications, Inc. to Magalie Roman Salas, CC Docket No. 96-98, filed August 24, 2001, p. 7, concerning Qwest and Verizon "no facilities" policies.

In its recent grant of Verizon's application to offer interLATA service in Pennsylvania, the Commission found that Verizon's practices concerning provisioning of high capacity loops, as explained by Verizon in that proceeding, did not expressly violate the Commission's unbundling rules. The Commission stated, however, that Section 271 applications are not the appropriate proceedings to address disputes that do not involve *per se* violations of its rules, new interpretive disputes concerning the precise content of ILECs' obligations to their competitors, or disputes that its rules have not yet addressed.[3] While the undersigned CLECs reserve the position that Verizon's new "no facilities" policy violates current rules, in particular loop conditioning rules, at a minimum this policy raises an issue that the Commission has not sufficiently addressed in its unbundling rules, namely to what extent are ILECs entitled to decline to provide UNEs, or impose additional charges, based on the need to modify existing facilities.

The Commission has not adequately clarified when ILECs may decline to provide UNEs because some modification to particular facilities in the existing network are required, including minor routine modification such as installation of multiplexers and line cards. The undersigned CLECs urgently request that the Commission establish policy and rules governing this area in order to assure that ILECs meet their obligation to provide UNEs on reasonable and nondiscriminatory terms and conditions as described in this letter. The undersigned CLECs request that the Commission do so by determining that Verizon must provide CLECs with unbundled broadband loops in all circumstances in which it would provide the same functionality to its own retail customers and that it direct Verizon to do so as a declaratory ruling in response to this letter. In addition, or to the extent necessary, the Commission should propose a rule to that effect in the upcoming NPRM concerning establishment of provisioning standards for special access and UNEs and adopt it on an expedited basis.

Verizon Has Not Established a Lawful Basis for Its "No Facilities" Policy

In the few instances where Verizon has attempted to articulate a lawful basis for its "no facilities" policy, it has grossly mischaracterized and otherwise misapplied the *Local Competition Order*,[4] the *UNE Remand Order*,[5] and *Iowa Utilities Board*.[6] Verizon has stated that it has no legal obligation to install additional electronics to provide DS1 or DS3 service to CLECs at UNE rates.[7] In support, it cites the *Local Competition Order* wherein the Commission stated that "we expressly limit the provision of unbundled interoffice facilities to existing

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[3] *Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, Memorandum Opinion and Order, CC Docket No. 01-138, FCC 01-269, released September 19, 2001, para. 92.

[4] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)("*Local Competition Order*").

[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999)("*UNE Remand Order*").

[6] *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997)("*Iowa Utilities Board*"), *reversed on other grounds, AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct. 721 (1999).

[7] Answer and Affirmative Defenses of Verizon Virginia Inc., Case No. PUC010166, Virginia State Corporation Commission, filed September 10, 2001, p. 4-5.

incumbent LEC facilities." [8] Verizon's attempt to exalt this snippet from the *Local Competition Order* into a sweeping legal excuse not to modify, or attach necessary electronics to, existing loops is a gross mischaracterization and misapplication of what the Commission actually said. First, this existing facility limitation only applies to interoffice facilities. There is nothing in the *Local Competition Order* to suggest that this limit on provision of interoffice facilities expresses, or was intended to express, the limits of ILEC obligations under Section 251(c)(3) for provision of unbundled loops, UNEs in general, or even interoffice facilities. Rather, this limitation on interoffice UNEs was apparently a pragmatic approach to assure that small ILECs were not unreasonably burdened in providing interoffice facilities. Thus, contrary to Verizon's view, the Commission did not state that ILEC UNE obligations as a general matter were defined by existing facilities and apparently limited provision of interoffice UNEs to existing facilities because of possible burdens on small ILECs.[9] There is no comparable limit on provision of DS1 and DS3 loop UNEs. Therefore, the cited statement in the *Local Competition Order* does not specifically justify Verizon's "no facilities" policy with respect to loops or otherwise establish an overarching principle that could justify ILEC's refusal to provide UNEs based on "no facilities."

Verizon also relies on a statement in the *UNE Remand Order* that "we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use." However, this statement only relieved ILECs from the obligation to construct entirely new interoffice links between new points specified by the CLEC. This is a far cry from installation of electronics and other facilities on loops that ILECs routinely provide for their own customers. The *UNE Remand Order* did not relieve ILECs from any obligation to construct new interoffice facilities between existing points in the network or establish any principle that ILECs are not required to augment or modify facilities in the existing network in order to provide UNEs, whether loops or unbundled transport. In any event, as in the *Local Competition Order*, the Commission in the *UNE Remand Order* did not make any comparable statement with respect to ILEC obligations to provide loop UNEs. Thus, the *UNE Remand Order* does not support Verizon's "no facilities" policy.

Verizon also relies on the statement in *Iowa Utilities Board* that "Section 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network – not a yet unbuilt superior one."[10] However, the undersigned CLECs are not requesting a superior network. Rather, the undersigned CLECs are requesting that Verizon provide unbundled access to the same network that ILECs provide to their own retail customers. The undersigned CLECs request that Verizon undertake only the placement and replacement of facilities that is routine in the existing network, not that Verizon build a new, superior network. Moreover, "network" as used by the Supreme Court means the type of technology and facilities that the ILEC actually currently deploys and when and how it ordinarily deploys them in the aggregate. Thus, the existing network includes the types of electronics that ILECs ordinarily attach to loops, even if not attached to particular loops, and it does not constitute provision of a new network to attach routine electronics to a loop. Therefore, whatever application the Supreme Court's no "superior

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8 *Local Competition Order*, para. 451.

9 *Local Competition Order, Id.*

10 *Iowa Utilities Board*, 120 F.3d 753, 813.

network" limitation may have, it does not justify Verizon's specific policy of declining to provide as loop UNEs what it provides to its own retail customers as part of its existing network.

Verizon also contends that the Commission's rules requiring line conditioning do not require it to install electronics and other equipment necessary to provide DS1 and DS3 loop UNEs because line conditioning involves removal of equipment, whereas the undersigned CLECs and others are requesting that Verizon add equipment. Regardless, of whether the current line conditioning rules invalidate Verizon's "no facilities" policy, which they do, the undersigned CLECs submit that there is absolutely no meaningful legal distinction under Section 251(c)(3) between ILECs removing or adding equipment. Significantly, there is no language in the Act that would so dramatically alter ILEC obligations to provide UNEs depending on whether the ILEC is adding or removing equipment. The point is that ILECs must affirmatively take the steps necessary to provide for CLECs as UNEs the same functionality that they use for their own retail customers whether these affirmative steps involve additions to, or removal of equipment from, the loop. Accordingly, the Commission should reject Verizon's attempt to convert a trivial factual distinction into a major statutory legal limitation on its obligation to provide UNEs. Thus, Verizon's obligation under Section 251(c)(3) are not defined by whether Verizon technicians remove equipment from, or add it to, the loop. Further, the loop conditioning rules represent a recognition by the Commission that ILECs have an obligation to take steps to provide as network elements the same functionality that they provide to their own retail subscribers.

To some extent Verizon also apparently seeks to justify its obligation that CLECs purchase special access in order to obtain DS1 loop functionality based on pricing concerns. However, the issue of whether and to what extent ILECs may charge for providing as UNEs the minor enhancements to loops that the undersigned CLECs request in order that they may receive DS1 functionality is essentially the same issue that has been raised by Mpower in its currently pending petition concerning loop conditioning charges.[11] In fact, ILECs may not impose any separate charges for loop conditioning, or for attaching electronics to loops, because it is inconsistent with TELRIC for all the reasons stated in Mpower's petition. The undersigned CLECs urge the Commission to promptly consider and grant Mpower's petition.

The Commission May Require ILECs to Modify And Attach Electronics to Loops

For the reasons explained above, Verizon has not provided any lawful basis for its cramped view of its unbundling obligations. More than that, however, the undersigned CLECs stress that the Commission may, pursuant to Section 251(c)(3) require ILECs to attach electronics and take other affirmative steps, such as reconfiguration and installation of multiplexers and equipment cases, in order to provide DS1 and DS3 loop UNEs. Section 251(c)(3) requires that ILECs provide UNEs on "conditions that are just and reasonable ..." In the recent *Collocation Remand Order*, the Commission found that the comparable provision in Section 251(c)(6) provided the Commission substantial authority to impose conditions on ILECs provision of collocation, including provision of cross-connection between collocated CLECs

[11] *Mpower Communications Corp. Files Petition For Expedited Declaratory Ruling on TELRIC Pricing Standards for Loop Conditioning Charges, Public Notice*, CCB/CPD No. 01-06, DA 01-684, March 16, 2001.

even though this was not directly "necessary" for interconnection or access to UNEs.[12] Similarly, the Commission may require ILECs to perform routine enhancements to loops, such as attachment of electronics, as a reasonable condition of provision of loop UNEs. Indeed, the requirement under Section 251(c)(3) that ILECs provide UNEs on reasonable terms and conditions provides a deep font of authority for the Commission to assure that ILECs do not unreasonably restrict the availability of UNEs in ways that effectively prevent CLECs from providing competitive services.

Section 251(c)(3) also requires that ILECs provide UNEs on nondiscriminatory terms and conditions. Simply stated, it constitutes a fundamental discrimination against CLECs for ILECs to routinely provide network capabilities to their own retail customers while refusing to do so for CLECs as UNEs. Moreover, as explained below, this significantly harms CLECs, as well as thwarting the pro-competitive goals of the Act. CLECs will not be able effectively to compete in the local marketplace if they are not able to provide service to customers on comparable terms as the ILEC because the ILEC will not provide as UNEs the same functionality that it provides to its own retail customers. Accordingly, the Commission may under Section 251(c)(3) require ILECs to provide enhancements to loops that they provide to their own retail customers in order to assure non-discriminatory provision of UNEs.

Several State Commission Have Reached the Correct Conclusion

The Illinois and Michigan commissions have considered and rejected the view that ILECs are not required to provide a network element as a UNE where the ILEC must engage in construction activities to do so. Ameritech had contended that loops are not available as UNEs unless all of "the required components already exist in a fully connected fashion."[13] The Illinois and Michigan commissions rejected Ameritech's cramped view of its unbundling obligations finding that Ameritech was required to provide the loop as a UNE even if this required some construction activity. The ICC stated:

> Ameritech's current definition [of "available"] does not provide (1) adequate parameters for determining in advance whether a UNE will be available and (2) a sufficient safeguard against discriminatory implementation. Under Ameritech's definition, a CLEC will not know if a UNE is available until it is told so by Ameritech. With regard to Ameritech's contention that its definition is consistent with the Eighth Circuit's determination that it is only obligated to provide unbundled access to its existing network, the Commission agrees with [CLECs] that the evidence presented indicates that CLECs have not sought access to a new or superior network, but only access to the network that Ameritech presently owns and manages on a nondiscriminatory basis.[14]

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[12] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, CC Docket No. 98-147, FCC 01-204, released August 2, 2001, paras. 80-84, ("*Collocation Remand Order*").

[13] *BRE Communications, L.L.C., d/b/a Phone Michigan v. Ameritech*, Opinion and Order, Case No. U-11735, p. 8, (Mich. PSC February 9, 1999)("*MPSC Order*"); *Illinois Bell Telephone Company, Investigation of Construction Charges*, Order, 99-0593, ICC August 15, 2000)("*ICC Order*").

[14] *ICC Order*, p. 20.

Both the Michigan and Illinois commissions also found that Ameritech was required to treat CLECs in the same manner as its own retail customers. The Michigan PSC rejected Ameritech's view "that it is not required to treat CLECs in the same manner as it treats retail customers."[15] The Michigan PSC stated that if Ameritech's "description of nondiscriminatory treatment were to be adopted, Ameritech Michigan would be free to treat all CLECs in an anticompetitive manner so long as it applies such treatment equally to all CLECs, irrespective of how it treats itself or its end-user customers."[16] Similarly, the ICC rejected Ameritech's view to the effect that "so long as Ameritech provides UNEs to all CLECs, itself, and its affiliates on the same terms, it does not matter how Ameritech treats and recovers its costs from its retail end users for the same activity."[17] Both state commissions required Ameritech to modify loops essentially anywhere within its existing network within its service territory and prohibited Ameritech from imposing special charges in certain respects when Ameritech determines that it cannot provide a requested UNE without construction activities.

The undersigned CLECs urge the Commission, like the Illinois and Michigan commissions, to determine that ILEC's must provide a loop as a UNE even when construction activities are required, that this does not constitute construction of a new or superior network, and that ILECs must do so in the same manner as they provide or construct the facility for its own retail customers. Again, to the extent a pricing issue is involved, the undersigned CLECs urgently request that the Commission resolve pricing issues raised in Mpower's pending loop conditioning petition.

Verizon's Policy Violates the "Best Practices" Requirement of the BA/GTE Merger Order

In the *BA/GTE Merger Order*, the Commission anticipated that its conditions "will require the merged firm to spread best practices throughout its region."[18] As noted below, Verizon's new "no facilities" policy was apparently adopted to conform the practices of the former Bell Atlantic to that of the former GTE. The undersigned CLECs respectfully submit that GTE's practice was not the best practice of the pre-merger companies, and that institution of this practice throughout the Verizon region was in fact adoption of an unreasonable, discriminatory, and unlawful policy for all the reasons described in this letter. Accordingly, the Commission should determine that Verizon's new policy violates the *BA/GTE Merger Order*.

Verizon's Policy Disadvantages CLECs

The undersigned CLECs stress that Verizon's "no facilities" policy is new and that it significantly harms CLECs. Although Verizon claims that it is not a new policy, this is belied by the fact that Verizon recently issued a notice to CLECs notifying them of this policy[19] and by the fact that at the same time the number of "no facilities" responses received by CLECs went through the roof. For example, prior to this new policy, approximately 98% of Broadslate's

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15 *MPSC Order*, p. 11.

16 *Id.* p. 29.

17 *ICC Order* p. 97.

18 *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, Memorandum Opinion and Order, CC Docket No. 98-184, FCC 00-221, released June 16, 2000, para. 354 ("*BA/GTE Merger Order*").

19 *DS1 and DS3 Unbundled Network Elements Policy*, Verizon, July 24, 2001.

DS1 UNEs were completed, whereas after, and currently, only about 50% are completed. At the time, Broadslate was informed by Verizon representatives that Verizon was changing its practices in the former Bell Atlantic territory in order to conform to practice in the former GTE territory. Thus, as noted, Verizon apparently perversely chose to adopt a "worst practices" approach. Moreover, many other CLECs at about the same time also observed a sustained spike in the number of "no facilities" responses received as evidenced by the fact that they promptly brought this to the attention of the Commission in Rocket Docket proceedings,[20] in the Verizon Pennsylvania 271 proceeding,[21] and before state commissions.[22]

Apart from the fact that Verizon initiated its policy without prior notice, even before it issued its advisory to CLECs, Verizon's policy significantly harms CLECs because CLECs do not know in advance what loops are subject to a "no facilities" response. Nor are they informed what facilities are ostensibly missing. Under Verizon's policy, Verizon will decline to provide DS1 UNEs in a large number of circumstances, including where new or reconfigured multiplexers or new apparatus cases in the central office or at the customer's premises are required.[23] CLECs have no knowledge of what loops will fall into this category or, when they receive a "no facilities" response what the reason is. This prevents CLECs from being able to effectively market service.

CLECs are further disadvantaged by Verizon's "no facilities" policy because Verizon insists that CLECs may obtain DS1 functionality in cases of "no facilities" only by ordering special access service. Then, in order to obtain the requested network functionality as a UNE which CLECs have a right to obtain under Section 251(c)(3), they must first order this as special access and then convert this to a UNE – assuming the ILEC offers this conversion on reasonable terms and conditions. Apart from the fact that refusing to provide the facility as UNE is unlawful for all the reasons stated above, this harms CLECs as a practical matter because not all ILECs permit conversion of single element special access service to the equivalent UNE on reasonable terms and conditions. BellSouth, for example, has recently informed Mpower that it will only permit conversion of DS1 and DS3 loop UNEs for a $1,000 and $9,000 charge, respectively.[24] Obviously, these charges vastly exceed the cost of what is no more than a billing change for an in-place facility. Moreover, nonrecurring charges associated with the provision of special access broadband capacity loops, and special access service charges, can themselves effectively prohibit meaningful competition. Therefore, the requirement that CLECs order special access and then convert this to a UNE is both unnecessary and provides ample opportunity for ILECs to impose unreasonable charges and delays on provision of UNEs in violation of Section 251(c)(3). CLECs are further disadvantaged by Verizon's "no facilities" policy because Verizon has a particularly poor track record in provisioning special access, as

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20 *See* Letter from Cavalier Telephone Company to Chief, Market Disputes Resolution Division, July 7, 2001.

21 *See* Comments of Broadslate Networks, Inc., CTSI, Inc., and XO Communications, Inc., CC Docket No. 01-138, filed July 11, 2001, p. 7.

22 Petition of Broadslate Networks of Virginia, Inc. for Declaratory and Other Relief; and Request for Expedited Relief, Case No. PUC010166, Virginia State Corporation Commission, filed August 3, 2001.

23 *See* Letter from Verizon to Magalie Roman Salas, CC Docket No. 96-98, filed August 21, 2001.

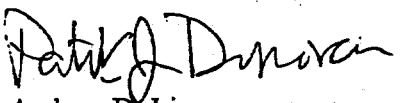
24 *See* Letter from Adelphia Business Solutions, Inc. *et al* to Chief Market disputes resolution Division, September 12, 2001.

shown by proceedings before the New York Public Service Commission.[25] Moreover, Verizon's expansive view of when no facilities are available, its insistence that CLECs order special access instead of UNEs, and imposition of a host of practical impediments on conversion of special access to UNEs are a manifestation of a larger goal to disadvantage CLECs by shifting them to separate and inferior legacy networks while immunizing new, advanced ILEC networks from unbundling obligations.

Conclusion

For all the reasons stated above, the undersigned CLECs urgently request that the Commission establish requirements governing when ILECs may, if ever, decline to provide loops on the grounds that no facilities are available. The undersigned CLECs request that the Commission determine that ILECs must take the same affirmative steps to provide DS1 and DS3 UNEs to CLECs that the ILEC takes to provide retail service to its own customers. The Commission should reject the limitations that Verizon seeks to impose under its "no facilities" policies as unreasonable, discriminatory, and unlawful under Section 251(c)(3). The undersigned CLECs request that the Commission establish these requirements in the form of a declaratory ruling in response to this letter interpreting Section 251(c)(3). In addition, or to the extent necessary, the Commission should propose to establish rules requiring this result in the upcoming special access and UNE provisioning NPRM. The Commission should also resolve any pricing issues associated with construction activities involved in providing UNEs by determining in the context of Mower's loop conditioning proceeding that any special charges are inconsistent with TELRIC. The Commission should take these and other steps to assure that ILECs are not successful in forcing CLECs to separate inferior and more expensive legacy networks.

Sincerely,



Andrew D. Lipman
Patrick J. Donovan

Counsel for Adelphia Business Solutions, Inc.
Broadslate Networks, Inc.
Focal Communications Corporation
Madison River Communications, LLC.
Mpower Communications Corp.
Network Plus, Inc.

Terry Romine
Director of Regulatory Affairs
Adelphia Business Solutions, Inc.
One North Main Street
Coudersport, PA 16915
(814) 260-3143

[25] Focal Communications Corporation of New York v. New York Telephone Company d/b/a Bell Atlantic of New York, Case No. 00-C-1390, filed August 15, 2000.

John L. Spilman
Director Regulatory Affairs
& Industry Relations
Broadslate Networks, Inc.
630 Peter Jefferson Parkway, Suite 300
Charlottesville, VA 22911

Richard J Metzger
Vice President, Regulatory Affairs
Pamela Arluk
Senior Counsel Regulatory
& Legislative Affairs
Focal Communications Corporation
7799 Leesburg Pike
Suite 850 North
Falls Church, VA 22043
(703) 637-8778

Trey Judy
Director of Regulatory Affairs
Madison River Communications, Inc.
103 South Fifth Street
Mebane, North Carolina 27302
919-563-8371

Russell I. Zuckerman
Senior Vice President & General Counsel
Francis D. R. Coleman
Vice President, Regulatory Affairs
Richard E. Heatter
Vice President, Legal Affairs
Mpower Communications Corp.
175 Sully's Trail – Suite 300
Pittsford, NY 14534
(716) 218-6568

Lisa Korner-Butler
Vice President, Regulatory
and Industry Relations
41 Pacella Park Drive
Randolph, MA 02368
(212) 894-2403

EXHIBIT 4

July 24, 2001

DS1 and DS3 Unbundled Network Elements Policy

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived obligation to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request,

and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.

EXHIBIT 5

(REDACTED)

VERIZON VIRGINIA INC.

Responses To
Broadslate Networks of Virginia Inc.
First Set of Interrogatories
Case No. PUC010166 and Case No. PUC010176

16. For each month beginning in January 2001 and extending to the most recent month for which data is available, provide the following information. In your response, please provide a breakdown by wire center, if available:

    a. The total number of orders and the percentage of orders for Flexpath T-1 exchange access lines/trunks/transport facilities which were rejected due to a determination by Verizon that facilities were not available.

    b. The total number and percentage of orders for T-1 Special Access lines/trunks/transport facilities which where rejected due to a determination by Verizon that facilities were not available.

    c. The percentage of orders for T-1 UNE loops and transport facilities which were rejected due to a determination by Verizon that facilities were not available.

Response:

    a. Verizon VA does not reject orders for Flexpath T-1 exchange access lines/trunks/transport facilities due to a lack of facilities. If Verizon determines there are no facilities available for these orders, they will build the facilities and complete the order.

    b. Verizon VA does not reject orders for T-1 Special Access lines/trunks/transport facilities due to a lack of facilities. If Verizon determines there are no facilities available for these orders, they will build the facilities and complete the order.

    c. Verizon's Response to Subpart c has been redacted.

EXHIBIT 6

VERIZON VIRGINIA INC.

Responses To

Interrogatories and Requests for Production Of Documents by the Staff of the State Corporation Commission (Second Set) PUC Case Nos. PUC010166, PUC010176

Request No. 13

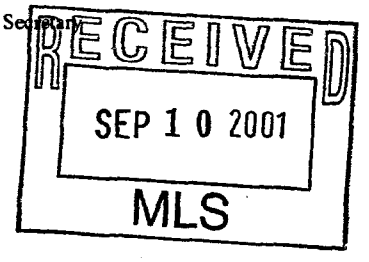
Refer to your response to Staff's First Set of Interrogatories, item 1. Please describe in detail the circumstances and reasons that caused the number of DS-1 UNE service requests rejected for facilities to change from zero, during January through April 2001, to monthly totals of 8 to 63 orders, during May through October 2001.

Response

Starting in late Spring 2001, Verizon undertook efforts to re-educate its provisioning personnel on Verizon's longstanding policy with respect to the provisioning of DS-1 and DS-3 UNE loops. Once those personnel were properly educated with respect to the policy and Verizon's legal obligations under the Act and the FCC's rules, those personnel began more consistently to follow the policy. Shortly thereafter, Verizon issued a notice to CLECs in late July reiterating its policy for provisioning DS-1 and DS-3 UNEs, which "restate[d] Verizon's policies and practices" in order to "ensure that there is no misunderstanding on this point." As the notice indicates, the policy set forth therein "is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements."

EXHIBIT 7

Lydia R. Pulley
Vice President, General Counsel & Secretary
Virginia



verizon

600 E. Main St., Suite 1100
Richmond, VA 23219-2441
Voice 804-772-1547
Fax 804-772-2143
E-mail: lydia.r.pulley@verizon.com

September 6, 2001

Mr. Joel H. Peck, Clerk
State Corporation Commission
Document Control Center
Post Office Box 2118
Richmond, Virginia 23216

Re: Case No. PUC010166

Dear Mr. Peck:

Enclosed for filing is the original and fifteen (15) copies of Verizon Virginia Inc.'s Answer to the Petition of Broadslate Networks of Virginia, Inc. in the above-referenced case.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Lydia R. Pulley

Enclosure.

Copy to:
Don R. Mueller, Esquire
Service List

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

PETITION OF	)	
	)	
BROADSLATE NETWORKS OF VIRGINIA, INC.	)	
	)	Case No. PUC010166
For Declaratory Judgment Interpreting Interconnection	)	
Agreement with Verizon Virginia Inc.	)	
(f/k/a Bell Atlantic - Virginia, Inc.) and Directing	)	
Verizon to Provision Unbundled Network Elements In	)	
Accordance with the Telecommunications Act of 1996	)	

ANSWER AND AFFIRMATIVE DEFENSES OF VERIZON VIRGINIA INC.

Verizon Virginia Inc. ("Verizon"), pursuant to 5 VAC 5-20-100 B of the Virginia State Corporation Commission ("Commission") Rules of Practice and Procedure, hereby responds to the Petition of Broadslate Networks of Virginia, Inc. ("Broadslate").

INTRODUCTION

Broadslate alleges – without foundation – that Verizon's DS1 and DS-3 UNE provisioning policy violates federal and state law in several respects. First, Broadslate claims that Verizon has recently changed its pre-existing policy and now improperly refuses to process DS-1 and DS-3 UNE loop orders unless the DS-1 or DS-3 facilities are already in place. According to Broadslate, Verizon is obligated to "condition" loops by attaching electronics to existing facilities to provide DS-1 or DS-3 service to CLECs.[1] "Conditioning," however, refers only to the *removal* of equipment from a loop of any devices that compromise its ability to support certain services; it does not require an ILEC to *install* additional equipment. Indeed, as the Eighth Circuit has made clear, Verizon has no obligation under the Telecommunications Act

of 1996 (the "Act") to build new facilities for CLECs, which is exactly what Broadslate is demanding.

Second, Broadslate claims that Verizon has violated the terms of this Commission's Order approving the merger of Bell Atlantic and GTE in Case No. PUC990100 (the "Merger Order").[2] More specifically, Broadslate claims that Verizon has failed to adopt the "best practices" of the two merged companies by refusing to build new DS-1 and DS-3 loop and transport facilities for CLECs.[3] This claim too lacks merit because the "best practices" provision of the Merger Order was *not* intended to force the merged company to adopt practices or to provide access to network elements that go beyond the requirements of law.

Third, Broadslate asserts that Verizon is discriminating against CLECs because it will install electronics to provide DS-1 and DS-3 service to its special access customers but not to purchasers of DS-1 or DS-3 UNEs.[4] Verizon, however, has no legal obligation to install additional electronics to provide DS-1 or DS-3 service to CLECs at UNE rates. If Broadslate wants Verizon to build facilities for Broadslate, it may order DS-1 and DS-3 service pursuant to Verizon's applicable tariffs.

In short, even if all of Broadslate's factual allegations were true (which they are not), they do not amount to a violation of law or the parties' Interconnection Agreement. Accordingly, the Petition fails to state a claim and should be dismissed.

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[1] Petition at ¶ 19-20.

[2] *Joint Petition of Bell Atlantic Corporation and GTE Corporation For Approval of Agreement and Plan of Merger*, Order Approving Petition, Case No. PUC990100, Commonwealth of Virginia State Corporation Commission, Nov. 29, 1999, at 8, 14 ("Merger Order").

[3] Petition at paragraph 2.

[4] *Id.*

1. Verizon's DS-1 and DS-3 Provisioning Policy Is Consistent With – and Indeed Goes Beyond – All Applicable Legal Requirements.

As Broadslate notes, Verizon issued a notice to CLECs in late July reiterating its policy for provisioning DS-1 and DS-3 UNEs.[5] Contrary to Broadslate's claim, however, that notice did not alter Verizon's longstanding policy.[6] Rather, it simply "restates Verizon's policies and practices" in order to "ensure that there is no misunderstanding on this point."[7] As the notice indicates, the policy set forth therein "is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements."[8]

Verizon's provisioning policy for these UNEs is, and has been, as follows:

- Verizon will unbundle DS-1 and DS-3 loop and interoffice facilities where those facilities are available.
- Where no facilities currently are available but Verizon has construction underway to meet anticipated demand for its access services, Verizon will provide an estimated provisioning date on CLEC UNE orders based on the anticipated completion date of the pending job.
- Where the requisite line cards have not been deployed but space exists in the multiplexers at the central office and at the customer's location, Verizon will order and place the necessary line cards in order to provision the UNE.

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[5] Broadslate attached that notice as Exhibit 1 to its Petition.

[6] Broadslate claims that it only received one "no facilities" notification from February 9 to June 15, 2001. (Petition at ¶ 11.) In some cases, where Verizon was able to fill orders based on planned construction (consistent with its policy, as described below), it provided Broadslate with a firm order confirmation ("FOC") containing an estimated construction completion date. In other cases, the building of new facilities was inadvertent. That does not mean, however, that Verizon has changed its policy – it has not, as explained in the text – or that Verizon has any obligation to continue building facilities where not required by the Act or any applicable law. In conjunction with the publication of the letter reaffirming Verizon's policy, Verizon is undertaking an effort to ensure that all departments are aware of the company's obligations and practices with respect to UNE provisioning.

[7] Petition, Ex. 1 at 1.

[8] *Id.*

- Verizon will cross-connect the existing common equipment (multiplexers) to the copper or fiber facility.

- Verizon will place a doubler in an existing apparatus case where necessary given the length of the loop.

- Verizon will place the appropriate network interface device (either a mounting assembly with a Smartjack or a DSX panel) at the customer's premise.

- If Verizon responds to a DS-1 or DS-3 UNE request with a Firm Order Confirmation notice indicating that it has spare facilities, and subsequently finds that those facilities are defective, Verizon will perform the work necessary to clear the defect.

- Consistent with the FCC's rules, Verizon will not: (a) deploy new copper or fiber facilities, (b) deploy new multiplexers in the central office or at the customer's premise where existing equipment is fully utilized, (c) deploy a new apparatus case on the loop or transport facilities where existing equipment is fully utilized, (d) reconfigure a multiplexer (that is, rewire and reprogram a shelf on the multiplexer from DS-3 to DS-1), or (e) deploy new facilities where it cannot correct a defect in existing facilities and no spare facilities are available.

Broadslate is wrong in claiming that Verizon is legally compelled to build new facilities where no facilities are available. As an initial matter, Broadslate does not appear to contend that Verizon must build out copper or fiber to provide a DS-1 or DS-3 UNE where such facilities do not exist, and any such contention could not be reconciled with the FCC's rules and policies.[9] Broadslate does argue, however, that Verizon's obligation to "condition" facilities includes "attaching the needed electronics" to loop or transport facilities to carry DS-1 and DS-3 signals.[10] This is incorrect.

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[9] *See, e.g.*, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 451 (1996) ("we expressly limit the provision of unbundled interoffice facilities to *existing* incumbent LEC facilities") (emphasis in original, subsequent history omitted) ("First Report and Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696, ¶ 324 (1999) (UNE Remand Order) ("we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use"). There is no logical basis for distinguishing loops from transport. The underlying principle is the same: an ILEC's unbundling obligation extends only to its existing network, not to some yet-to-be-built network.

[10] Petition at ¶ 19.

The FCC's rules and decisions could not be more clear that an ILEC's conditioning obligation only requires it to *remove* equipment that compromises a loop's ability to support certain services, not to *install* additional equipment.[11] In this regard, Rule 51.319(a)(3)(i) defines "line conditioning" as "the *removal* from the loop of any devices that may diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL service."[12] Similarly, the UNE Remand Order states that a "conditioned" loop is "a loop from which bridge taps, low-pass filters, range extenders, and similar devices have been *removed*" and that "[l]oop conditioning requires the incumbent LEC to *remove* these devices, paring down the loop to its basic form."[13] In fact, the FCC has *never* forced an ILEC to invest in new equipment in order to enable a loop to support services that the loop cannot otherwise provide. The crux of Broadslate's allegation – that the conditioning requirement obligates Verizon to add equipment to its loops – is therefore devoid of legal merit.

In addition to ignoring the plain language of the FCC's rules, Broadslate's interpretation of "conditioning" to encompass the addition of electronics to a loop in order to enhance its performance is inconsistent with the Eighth Circuit's holding that CLECs may not force an ILEC to construct a superior quality network on their behalf. As the court explained, "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network –

[11] Verizon does not agree that the FCC may require ILECs to condition loops consistent with section 251(c)(3) of the Act, but it continues to comply with the FCC's conditioning policies pending judicial review.

[12] 47 C.F.R. § 51.319(a)(3)(i) (emphasis added). Likewise, the FCC's definition of the loop element states that it encompasses the "features, functions, and capabilities" of the loop transmission facility, including "dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as [DSLAMs], and line conditioning." *Id.* § 51.319(a)(1). The "attached electronics" are electronics already connected to the wire or fiber. In contrast, Broadslate wants access to equipment that is not currently attached to the loop.

[13] UNE Remand Order, ¶ 172 (1999) (emphasis added); *see also id.* at ¶¶ 173, 190 (referring to "conditioned" loops as those that have been "stripped of accreted devices").

not a yet unbuilt superior one."[14] Under Broadslate's reasoning, however, ILECs would have to act as construction companies for CLECs whenever it is technically feasible to build the kind of facility the CLEC wants. This is simply not the law.

In short, Verizon is providing unbundled DS-1 and DS-3 UNEs in compliance with the Act and the FCC's requirements; in fact, Verizon's policy goes well beyond those obligations. Broadslate's arguments to the contrary are factually mistaken and legally insupportable.

2. Verizon's DS-1 and DS-3 Provisioning Does Not Violate the "Best Practices" Requirement of the Merger Order.

Broadslate misstates the requirements of, and Verizon's compliance with, the Merger Order. In the Merger Order, the Commission did not dictate which practices the merged companies would adopt as "best practices," but rather left it up to the merged companies to determine which practices to adopt. Indeed, the Order states that "[n]ot later than 30 days prior to the consummation of the proposed merger, BA-VA and GTE South will provide to the Division of Communications a full report of the 'best practices' *they have decided* to adopt from one another . . . and an estimate of the expected savings that will result."[15] Verizon complied with its obligation to submit the "best practices" report, and has filed additional reports every six months since filing its initial report. Therefore, Verizon has fully complied with its obligations under the Merger Order.

In any event, Verizon's DS-1 and DS-3 provisioning policy is not an "adoption" of a "best practice" at all, but merely reflects Verizon's compliance with its obligations under applicable law to provide access to unbundled network elements. It is clear that the "best practices"

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[14] Iowa Util. Bd. v. FCC, 120 F.3d 753, 813 (8th Cir. 1997), *appealed on other grounds*, AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721 (1999).

[15] Merger Order at 8, 14 (emphasis added.)

provision of the Merger Order was meant to encourage the former GTE and Bell Atlantic to adopt the most efficient processes and procedures of the two companies in order to realize greater merger synergies and improved customer service. It was *not* intended to force the merged company to provide access to network elements beyond the requirements of the Act and the FCC's rules or to become a construction company for CLECs.

3. Verizon's DS-1 and DS-3 Provisioning Policy Is Non-Discriminatory.

Broadslate alleges that it is discriminatory for Verizon to refuse to deploy new equipment for purchasers of UNEs when it is willing to do so for purchasers of DS-1 and DS-3 special access.[16] Broadslate's argument is a red herring. Verizon's policy is fully consistent with the Act's unbundling requirements and does not discriminate against Broadslate or any other UNE purchaser. As set forth above, Verizon has no legal obligation to install additional electronics to provide DS-1 or DS-3 service to CLECs at UNE rates.

Verizon will, however, build new DS-1 and DS-3 facilities for wholesale customers such as Broadslate *and for all other customers* on the same terms under its special access tariffs or applicable state tariffs. As Verizon stated in its July 24 notice, "Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design and construction program."[17] Requests from all of Verizon's customers who order service under the appropriate special access tariffs or applicable state tariffs, whether they are CLECs, IXCs or end users, are handled in the same manner, precluding any claim of discrimination.

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[16] Petition at paragraph 21.

[17] Petition, Exh. 1 at 2.

Broadslate, nevertheless, seems to imply that Verizon must use the same rates and rate structure for all customers who order DS-1 and DS-3 services or UNEs from Verizon. Broadslate's argument, however, proves too much. Verizon is not legally obligated to charge the same rate to all customers – indeed, the suggestion that the non-discrimination provisions (whether in the Act, the FCC rules, or state law) requires identical rates and rate structures for wholesale and retail customers is ridiculous. Among other problems, such a requirement would preclude competition. Rather, Verizon's duty to charge uniform *pricing* extends only to classes of customers who are similarly situated – which retail and wholesale customers are not. *See* Va. St. Ann. § 56-234 ("It shall be [the public utilities'] duty to charge uniformly therefor all persons, corporations or municipal corporations using such service *under like conditions*.").

In short, the Act does not require Verizon to build new facilities for DS-1 or DS-3 UNEs for Broadslate and charge only UNE rates. If Broadslate wants DS-1 or DS-3 service where there are no facilities, it can purchase them under Verizon's tariff, like any other customer. There is nothing discriminatory about that.

* * *

For the foregoing reasons, Verizon's provisioning policies for DS-1 and DS-3 UNEs are fully consistent with the Act and the FCC's rules, and therefore Broadslate is not entitled to any relief whatsoever.

ANSWER

1. The allegations of Paragraph 1 are not directed toward Verizon, and therefore no response is required. To the extent a response is required, Verizon states that it is informed and believes that Broadslate is a Virginia corporation with its principal place of business at 630 Peter Jefferson Parkway, Charlottesville, Virginia. Verizon is further informed and believes that

Broadslate is authorized to provide local exchange services in the Commonwealth of Virginia pursuant to certificates issued by this Commission. Verizon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 and therefore denies the same.

2. The allegations of Paragraph 2 are not directed toward Verizon, and therefore no response is required. To the extent a response is required, Verizon states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies the same.

3. Verizon admits that it is an authorized provider of local exchange services within the Commonwealth of Virginia. The remaining allegations assert legal conclusions to which no response is required.

4. Verizon admits that Broadslate elected to adopt the interconnection agreement by and between Verizon (f/k/a Bell Atlantic – Virginia Inc.) and Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad"), dated October 7, 1998 (the "Interconnection Agreement"). Verizon further admits that the Verizon/Broadslate agreement was approved by this Commission on May 12, 2000 and that the agreement became effective as of December 8, 1999. Verizon sent Broadslate a notice of termination of the agreement on January 12, 2001.

5. The allegations of Paragraph 5 assert legal conclusions to which no response is required. To the extent a response is required, Verizon states that the terms of the Agreement specifically provide for the right of either party to petition the Commission – or other forum of competent jurisdiction – to resolve disputes arising under the Agreement in the event that "negotiations fail to resolve the dispute in a reasonable time." Verizon denies the remaining allegations of Paragraph 5.

6. The allegations in the first, second and fifth sentences of Paragraph 6 assert legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations in the first, second, and fifth sentences of Paragraph 6. Verizon denies the allegations in the third sentence of Paragraph 6. Verizon is without knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 6 and therefore denies the same. Verizon denies the remaining allegations of Paragraph 6.

7. The allegations of Paragraph 7 are not directed toward Verizon, and therefore no response is required.

8. Correspondence regarding the Petition and this Answer may be sent to Verizon at the following addresses:

Lydia R. Pulley
Verizon Virginia Inc.
600 East Main Street, Suite 1100
Richmond, VA 23219
Tel: (804) 772-1547
Fax: (804) 772-2143

Leigh A. Hyer
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
Tel: (703) 351-3064
Fax: (703) 351-3651

9. The allegations in Paragraph 9 are not directed toward Verizon, and therefore no response is required. To the extent a response is required, Verizon states that Broadslate has ordered two-wire xDSL capable loops and four-wire DS-1 loops from Verizon. Verizon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and therefore denies the same.

10. The allegations of Paragraph 10 assert legal conclusions to which no response is required. To the extent a response is required, Verizon states that the language of the Interconnection Agreement speaks for itself. Verizon admits that, under the terms of the Interconnection Agreement, it must provide unbundled access to DS-1 and DS-3 UNEs "in accordance with the requirements of FCC Regulations and Applicable Law." Verizon denies that the Interconnection Agreement, FCC regulations, or applicable law requires Verizon to build new DS-1 and DS-3 facilities for Broadslate where such facilities do not already exist. Verizon denies the allegations in the fifth sentence of Paragraph 10.

11. Verizon states that during the period from February 1, 2001 to July 31, 2001, Broadslate ordered 42 new UNE DS-1 loops. Of these, Verizon confirmed that facilities were available for 35 of the orders, and one order was cancelled by Broadslate. Verizon denies the remaining allegations of Paragraph 11.

12. Verizon denies that it "established new policies and practices relating to its treatment of CLEC orders for DS-1 and DS-3 UNEs." Verizon issued a notice to CLECs in late July reiterating its policy for provisioning DS-1 and DS-3 UNEs. Contrary to Broadslate's claim, however, that notice did not alter Verizon's longstanding policy. It simply "restates Verizon's policies and practices" in order to "ensure that there is no misunderstanding on this point." As the notice indicates, the policy set forth therein "is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements." Verizon denies the allegations in the third and fourth sentences of Paragraph 12. Verizon states that in many instances in which it rejected Broadslate's DS-1 UNE orders, Verizon explained to Broadslate that

no existing facilities were available and that none were planned, consistent with its policy and applicable law. Verizon denies the remaining allegations of Paragraph 12.

13. Verizon admits that it sent the letter attached to the Petition as Exhibit 1 to all of its CLEC customers, reiterating its policy for provisioning DS-1 and DS-3 UNEs. As the notice indicates, the policy set forth therein "is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements." Verizon denies any remaining allegations in Paragraph 13.

14. Verizon states that the language in its July 24, 2001 letter speaks for itself. Verizon denies that the July 24, 2001 letter "announces new practices." To the contrary, the letter did not alter Verizon's longstanding policy but simply "restate[d] Verizon's policies and practices" in order to "ensure that there is no misunderstanding on this point."

15. Verizon denies the allegations of Paragraph 15.

16. Verizon denies the allegations of Paragraph 16.

17. Verizon admits the allegations in the first sentence of Paragraph 17. Verizon states that the Commission ""encourage[d]" the former Bell Atlantic and GTE "to give priority to unifying their practices with regard to interactions with the competitive local exchange carriers." Verizon further states that the Commission did not "direct" which practices the companies would adopt as "best practices," but rather left it up to the companies to determine which practices to adopt.[18] Verizon admits the allegations in the fourth sentence of Paragraph 17. Verizon further states that nothing in the Merger Order requires Verizon to adopt any particular practice or to provide

[18] *See* Order Approving Petition, Case No. PUC990100, at 14.

access to unbundled network elements beyond the requirements of the Act or the FCC's rules implementing the Act. Verizon denies the remaining allegations of Paragraph 17.

18. The allegations of Paragraph 18 assert legal conclusions to which no response is required. To the extent a response is required, Verizon states that the Commission did not direct which practices the companies would adopt as "best practices," but rather left it up to Verizon to determine which practices to adopt.[19] Nothing in the Merger Order requires Verizon to adopt any particular practice of either the former Bell Atlantic or GTE, nor does it in any way obligate Verizon to provide access to unbundled network elements beyond the requirements of the Act or the FCC's rules implementing the Act. Verizon denies the remaining allegations of Paragraph 18.

19. The allegations of Paragraph 19 assert legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations in the first two sentences of Paragraph 19. Verizon admits that the quoted language in the third through fifth sentences of Paragraph 19 is accurately stated, but denies that Verizon's obligation to condition loops requires Verizon to build new facilities where no facilities are available. Verizon denies the allegations in the sixth sentence of Paragraph 19. Verizon states that it has no obligation to provide DS-1 or DS-3 loop or transport UNEs where such facilities do not already exist. The Commission's rules and decisions could not be more clear that the ILECs' conditioning obligation requires them only to *remove* equipment that compromises the loop's ability to support certain services, not to *install* additional equipment. In this regard, Rule 51.319(a)(3)(i) defines "line conditioning" as "the *removal* from the loop of any devices that may diminish the capability of the loop to deliver

[19] *Id.*

high-speed switched wireline telecommunications capability, including xDSL service."[20] Similarly, the UNE Remand Order states that a "conditioned" loop is "a loop from which bridge taps, low-pass filters, range extenders, and similar devices have been *removed*" and that "[l]oop conditioning requires the incumbent LEC to *remove* these devices, paring down the loop to its basic form."[21] In fact, the FCC has *never* forced an ILEC to invest in new equipment in order to enable a loop to support services that the loop cannot otherwise provide. Verizon denies the remaining allegations of Paragraph 19.

20. The allegations of Paragraph 20 assert legal conclusions to which no response is required.

21. The allegations of Paragraph 21 assert legal conclusions to which no response is required. To the extent a response is required, Verizon denies the allegations in the first sentence of Paragraph 21. Verizon states that it does, in fact, condition loops for requesting CLECs that order UNEs. Verizon denies that building new DS-1 or DS-3 facilities (including installing the necessary electronics where no electronics exist) constitutes "loop conditioning" under the FCC's rules and denies that it has an obligation to install electronics or to perform other construction to provision UNEs for CLECs. Nevertheless, Verizon will build new DS-1 and DS-3 facilities for wholesale customers such as Broadslate and for all access service customers on the same terms under its special access tariffs or applicable state tariffs. As Verizon stated in its notice, "Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design and construction program."[22] Requests from all customers --

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[20] 47 C.F.R. § 51.319(a)(3)(i) (emphasis added).

[21] UNE Remand Order, ¶ 172 (1999) (emphasis added); *see also id.* at ¶¶ 173, 190 (referring to "conditioned" loops as those that have been "stripped of accreted devices").

[22] Petition, Exh. 1 at 2.

whether they are CLECs, IXCs or end users – who order DS-1 or DS-3 service under Verizon's special access tariffs or applicable state tariffs are handled in the same manner. Verizon denies that it imposes "special construction" charges on CLECs for installation of electronics to provide DS-1 of DS-3 service under its tariffs. Verizon denies the remaining allegations of Paragraph 21.

22. Verizon states that it has no legal obligation to install additional electronics to provide DS-1 or DS-3 service to CLECs at UNE rates, and therefore there can be no "double recovery" of costs. Verizon further denies that it imposes "special construction" charges on CLECs (or any other customer) for installation of electronics to provide DS-1 or DS-3 service under its tariffs. Verizon denies the remaining allegations of Paragraph 22.

23. The allegations in Paragraph 23 assert legal conclusions to which no response is required. To the extent a response is required, Verizon states that it has no legal obligation to install additional electronics to provide DS-1 or DS-3 service to CLECs at UNE rates. Verizon denies the allegations of Paragraph 23.

24. The allegations of Paragraph 24 assert legal conclusions to which no response is required. To the extent a response is required, Verizon admits that sections 11.1 and 11.5.6 of the Interconnection Agreement require Verizon to provide DS-1 and DS-3 loops and IOF transport "in accordance with the requirements of FCC Regulations and Applicable Law," but denies that Verizon is obligated to build new facilities to provide UNEs to CLECs. Verizon denies the remaining allegations of Paragraph 24.

AFFIRMATIVE DEFENSE

The Petition fails to state a claim for which relief may be granted. First, as set forth in the introduction, Verizon's DS-1 and DS-3 UNE loop and transport provisioning policy

is fully consistent with the Act and with the FCC's rules implementing the Act. In particular, Verizon has no obligation to build new facilities for CLECs or to add new equipment to existing loop facilities to enhance their performance. The United States Court of Appeals for the Eighth Circuit, on review of the FCC's First Report and Order, expressly held that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network – not a yet unbuilt superior one."[23] Moreover, the FCC has repeatedly stated that ILECs are not required to construct new transport facilities to provide unbundled network elements to CLECs. Therefore, even if the Commission were to accept all of the factual allegations in the Petition as true, Broadslate has failed to state a claim for violation of the Act or the FCC's rules. In addition, Broadslate asserts in its Petition that 20 VAC 5-400-180 should be interpreted consistent with federal law. Accordingly, because Broadslate has failed to allege a violation of federal law, it has also failed to allege a violation of Virginia law. Similarly, Broadslate's contract claim is based only on its allegation that Verizon has violated "FCC Regulations and Applicable Law."[24] Therefore, Broadslate has failed to allege any breach of contract, since Verizon's DS-1 and DS-3 UNE provisioning policy is fully consistent with FCC rules, the Act, and applicable Virginia statutes.

Second, Broadslate's claim that Verizon has violated the terms of the Merger Order by failing to construct new facilities for DS-1 and DS-3 UNEs as a "best practice" is likewise without merit. The Merger Order did not dictate which practices the former Bell Atlantic and GTE would adopt as "best practices," but rather left it up to the merged companies to determine which practices to adopt. Indeed, the Order states that "[n]ot later than 30 days prior to the

[23] *Iowa Utilities Bd.*, 120 F.3d at 813.

[24] Petition at ¶ 24.

consummation of the proposed merger, BA-VA and GTE South will provide to the Division of Communications a full report of the 'best practices' *they have decided* to adopt from one another . . . and an estimate of the expected savings that will result."[25] Broadslate does not allege in its Petition that Verizon failed to submit the required "best practices" reports to the Commission. Therefore, Broadslate has failed to allege any violation of the terms of the Merger Order.

Third, Broadslate's claim that Verizon's alleged policy of charging "special construction" charges to requesting CLECs who order UNEs is discriminatory or constitutes "double recovery" is likewise without merit. As set forth above, Verizon has no legal obligation to install additional electronics to provide DS-1 or DS-3 service to CLECs at UNE rates; therefore, there can be no "double recovery." Moreover, Broadslate does not allege that Verizon will build new DS-1 and DS-3 facilities for its retail customers and only charge them the UNE rate for those facilities. Indeed, as set forth above, Verizon has no obligation to charge the same rate to all customers. Verizon's duty to provide nondiscriminatory pricing extends only to classes of customers who are similarly situated – which retail and wholesale customers are not. *See* Va. St. Ann. § 56-234. Therefore, even accepting as true the factual allegations in Paragraph 21-23 of the Petition, Broadslate has failed to state a claim that the charges that Verizon imposes on CLECs for DS-1 or DS-3 service under its tariff are in any way discriminatory. Therefore, the Petition should be dismissed in its entirety.

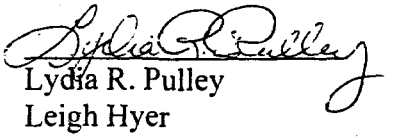
REQUEST FOR RELIEF

For all of the reasons stated herein, Verizon respectfully requests that the Commission deny the relief requested by Broadslate in the Petition, to affirm that Verizon's policy for provisioning DS-1 and DS-3 unbundled loops and transport is consistent with applicable law, the

[25] Merger Order at 8, 14 (emphasis added.)

FCC's rules, this Commission's rules, and the terms of the Merger Order, and to dismiss the Petition in its entirety.

Respectfully submitted,



Lydia R. Pulley
Leigh Hyer
600 East Main Street
Richmond, Virginia 23219
804-772-1547

Attorneys for
Verizon Virginia Inc.

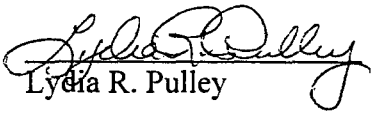
September 6, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2001, a copy of Verizon Virginia Inc.'s Answer to the Petition of Broadslate Networks of Virginia, Inc. was sent via U. S. Mail and/or fascimile to:

John L. Spilman
Director, Regulatory Affairs & Industry Relations
Broadslate Networks of Virginia, Inc.
630 Peter Jefferson Parkway
Suite 300
Charlottesville, Virginia 22911
(via U. S. Mail)

Russell M. Blau, Esquire
Edward W. Kirsch, Esquire
Michael L. Shor, Esquire
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N. W.
Suite 300
Washington, D. C. 20007
(via Fascimile & U. S. Mail)



Lydia R. Pulley